



FEDERAL ELECTION COMMISSION  
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Audit Referral 99-02

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON  
ACTING STAFF DIRECTOR

FROM: ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: METROPOLITAN LIFE INSURANCE COMPANY (METLIFE) EMPLOYEES'  
POLITICAL PARTICIPATION FUND A - REFERRAL MATTER

On February 16, 1999, the Commission approved the final audit report on the Metropolitan Life Insurance Company (Metlife) Employees' Political Participation Fund A. The final audit report was released to the public on February 26, 1999. As a result, the attached finding (Finding II., Audit Finding And Recommendation - Maintaining Employee Payroll Deduction Authorization Forms), the only finding in the final audit report, meets the criteria for referral for a possible compliance action. Although Metlife is a small committee (Total receipts \$355,000), and the amount of the contributions lacking the proper documentation is approximately one-half of that, the precedent is significant.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Henry Miller or Alex Boniewicz at 694-1200.

Attachment as stated

## **II. AUDIT FINDING AND RECOMMENDATION - MAINTAINING EMPLOYEE PAYROLL DEDUCTION AUTHORIZATION FORMS**

Section 104.14 (b) (1) of Title 11 of the Code of Federal Regulations provides that each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports or statements. Records to be maintained with respect to the matters required to be reported, include bank records, vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

As noted above, the majority of the contributions received by MetLife were made through payroll deduction. The Audit staff reviewed these contributions on a sample basis. For 53% of the sample items, the related payroll deduction authorization form was not available. Those that were available were dated between 1995 and 1997. The forms reviewed implemented changes in the amount to be deducted, enrolled new participants, or canceled prior authorizations. Authorization forms prior to 1995, although apparently still in effect, could not be located.

This matter was discussed with the Treasurer at an interim conference and at the exit conference. The Treasurer stated that the person responsible for the authorization forms prior to 1995 had been replaced and that a search for the missing records would be made. No additional authorization forms had been provided at the time of the interim audit report.

The interim audit report recommended that MetLife locate the missing employee payroll deduction authorization forms or obtain written confirmations from contributors regarding their authorizations and provide copies for review. The written confirmations were to include the employee's name, address, amount authorized for payroll deduction (or lump sum amount), and the date of the authorization.

In response to the interim audit report, Metlife's attorney submitted a letter which requested that the Commission delete from the Final Audit report the finding regarding Metlife's failure to keep records of payroll deduction authorization forms. The response stated, in part, that:

"There is no legal basis for the Report's finding or recommendations. The Report relies on 11 CFR § 104.14(b) which requires a PAC to maintain for three years records, 'including vouchers, worksheets, receipts, bills and accounts,' which provide in sufficient detail the necessary information to verify the reports which the PAC filed with the

FEC. However, nowhere in that rule, or anywhere else in the FEC regulations, are PACs required to keep records of Authorization Forms....

It is important to note that although not required by law, Metlife PAC maintained the Authorization Forms going back three years. As confirmed in the Report, Metlife PAC has on file Authorization Forms 'dated between 1995 and 1997' and is only missing Authorization Forms signed before 1995. Thus, even if Metlife was required to keep payroll authorization forms, nothing specifies that those records must be maintained three years.... The auditors are now seeking forms they have no authority to demand under the rules, outside the time for maintaining any records, and outside the coverage dates of the audit."

"For the above reasons, the Commission should delete from the Final Audit Report the finding regarding Metlife PAC's failure to keep records of Authorization Form. If the Commission desires PACs to maintain records of payroll deduction authorization form, particularly those beyond the three year period in Section 104.14(b), we suggest that the Commission amend its regulations to specify that payroll deductions authorization forms must be maintained and because of the continuing nature of payroll deduction, further specify the retention period for those forms."

Metlife attempts to apply 11 CFR §104.14(b) very narrowly, by stating that it does not explicitly require that authorization forms be maintained. The examples of documentation contained within the cite are not an all encompassing list; rather they are intended to be illustrative. An attempt to create such a list would be cumbersome and inevitably miss some necessary document referred to by some name by some reporting entity. The substantive wording of the cite requires records be maintained "...which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness." The authorization forms, which are used to implement employees payroll deductions, provide the "necessary information" needed to verify the "accuracy and completeness" of the reports filed.

Additionally, the response argues that even if Metlife was required to keep authorization forms, nothing specifies that those records must be maintained for more than three years and that authorizations had been maintained for the period 1995 - 1997. Again, Metlife errs in its interpretation of the requirements. Under 11 CFR §104.14(b), all reports are required to be preserved for not less than three years after the report is filed, and 11 CFR §102.9(c) requires the supporting records to be maintained for the same period. A payroll deduction authorization form is a record supporting each report on which a contribution made pursuant to that authorization is reported. Therefore, it is not the age of the authorization form that governs, but the age of the last report on which a related contribution is reported. All of the authorization forms sought during the audit were current records supporting the reports filed during the audit period. There is no reason for the Commission to amend its regulations

regarding retention of payroll deductions authorization forms. Records must be maintained three years from the date of the report to which they pertain.

Finally, although not discussed in the interim audit report, the response raises the issue of the FEC's prohibition on reverse check-off payroll deduction plans which result in involuntary contributions. See, FEC v National Education Ass'n ("NEA"), 457 F. Supp. 1102, 1106-1107 (D.C.D.C. 1978); 2 USC § 441b(b)(3); 11 CFR § 114.5. Metlife notes that the FEC prohibition does not require a PAC to maintain records of authorization forms and that "it is inappropriate and outside the scope of the NEA decision to bootstrap a recordkeeping requirement on a prohibition against involuntary contributions." We agree that NEA does not require a PAC to maintain records of authorization forms. However, Metlife fails to note that NEA did require that written affirmations of intent to contribute be obtained and, that absent receipt of such affirmations, money collected through the reverse check-off plan was required to be returned.

It is concluded that Metlife was required to maintain the payroll deduction authorization forms to support the contributions it reported during the audit period. It is also concluded that Metlife did not comply with the recommendation in the Interim Audit Report.